IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**O R D E R**

Ram Lal Vs. State of Raj. and Anr.

**S. B. CIVIL WRIT PETITION NO. 2003/1995**

DATE OF ORDER : 13.1.2005

**P R E S E N T**

**HON'BLE MR. GOVIND MATHUR, J.**

Mr. M.S. Singhvi, for the petitioner.
Mr. B.L. Tiwari, for the respondents.

**BY THE COURT**:

By the instant writ petition the petitioner is assailing validity and propriety of the order dated 23.6.95 passed by the Dy. Secretary to the Government of Rajasthan, Department of Education (Group III) whereby the petitioner has been reverted to the post of Principal, Degree College from the post of Principal, Post Graduate Degree College. The petitioner while assailing the validity of the order dated 23.6.95 also sought a direction for respondents to consider his case for promotion to the post of Principal, Post Graduate Degree College/ Joint Director, Directorate of College Education against the vacancies which are not pertaining to reserve categories for the year 1995-96.

The petitioner is a member of Rajasthan Educational Service Collegiate Branch created under Rajasthan Educational Service Collegiate Branch Rules, 1986. The petitioner was promoted as Vice Principal, Post Graduate Degree College against the vacancies of the year 1993-94 under the order dated 2.11.1994 passed by the Deputy Secretary to the Government of Rajasthan, Department of Education Group III, Jaipur. The respondent State published a seniority list pertaining to the members

of Rajasthan Educational Service (Collegiate Branch) under a memorandum dated 25.1.1995. In the seniority list dated 25.1.1995 name of the petitioner appears at S.No. 47 in the category of Vice Principal, Degree College. In the said list name of Smt. Asha Mishra and Sh. Lok Nath Shaily appears at S.No. 48 and 49 respectively. The respondent-State under an order dated 15.2.1995 made promotions of 31 persons holding the post of Vice Principal, Degree College as Principal, Post Graduate Degree College/ Joint Director. These promotions were made against the vacancies of the year 1994-95. By another order dated 15.2.1995 nine Vice Principals, Post Graduate Degree College, including the petitioner were promoted as Principal, Post Graduate Degree College/Joint Director against the vacancies of 1994-95. These promotions were made under the criteria of seniority cum merit and were subject to review and revision. Name of the petitioner in the order dated 15.2.1995 appears at S.No.3 and all other persons below the name of the petitioner in the order dated 15.2.1995 are said to be junior than the petitioner in the cadre of Vice Principal under the Rules of 1986. The petitioner in pursuance of the order dated 15.2.95 availed promotion to the post of Principal, Post Graduate Degree College and was posted as Principal, Government Degree College, Deedwana.

The respondent-State on 23.6.95 passed another order whereby 13 persons were promoted as Principal, Post Graduate Degree College against the vacancies of the year 1995-96. These promotions were made under the recommendations made by the Departmental Promotion Committee and were on regular basis. The order dated 23.6.1995 contains the name of Smt. Asha Mishra and Sh. Lok Nath Shaily at S.No. 2 and 3 among the regularly promoted incumbents. It is pertinent to note here that by the order dated 15.2.1995 Smt. Asha Mishra and Lok Nath Shaily were promoted as Principal, Post Graduate Degree College along with the

petitioner subject to review and revision and their names were shown below to the petitioner. They were also shown junior to the petitioner in the seniority list dated 25.11.95.

On 23.6.95 the respondent-State while making promotions of 13 persons as Principal, Post Graduate Degree College also passed an order bearing No.F1(15)Education-3/93 whereby the petitioner was ordered to be posted as Principal, Government Degree College, Suratgarh on reversion. The petitioner by this petition for writ has given challenge to both the orders dated 23.6.95 whereby promotions were given to 13 persons as Principal, Post Graduate Degree College ignoring his claim and also the order whereby he was reverted as Principal, Degree College.

The sole contention of the petitioner is that there was no occasion to revert him as the petitioner was entitled to be considered for promotion and then for regular promotion as Principal, Post Graduate Degree College against the vacancies of the year 1995-96. According to the petitioner there was no just and valid reason to deny promotion to him as Principal, Post Graduate Degree College against the vacancies of the year 1995-96 specially in the circumstances that at least 13 persons junior to him were promoted as Principal under the criteria of seniority-cum-merit. The petitioner contended that he is a member of Scheduled Caste but irrespective of this fact he is entitled to be considered for promotion in accordance with the general seniority in the cadre of Vice Principal.

A reply to the writ petition has been filed on the behalf of the respondents stating therein that the petitioner being a member of Scheduled Caste was required to be considered for promotion against the vacancies in the applicable roster for Scheduled Castes. This was necessary for the reason that in no case reservation quota and the

percentage of reservation be allowed to exceed as per the directions given by Hon'ble Supreme Court in the case of R.K. Sabharwal and Ors. Vs. State of Punjab & Ors. reported in Judgments Today 1995 (Vol.II) SC 351. The stand taken by the respondents to this effect in their reply is worth to be noticed as under:

> "10.....This was necessary for the reasons that in no case reservation quota and the percentage of reservation was not to exceed as per the intention and object and observation made by Hon'ble Supreme Court in case of R.K. Sabharwal Vs. State of Punjab reported in JT, 1995 (2) SC, 351 decided on 10.2.95. It was observed that the prescribed quota and prescribed percentage should not be allowed to exceed in any case.
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> 15. That in reply to para No.15 of the amended writ petition, it is submitted that the petitioner was not entitled to get promotion for want of quota in reserve category. For the year 1995-96 his claim was premature and was not capable for any consideration as far as the candidate 4 to 9 mentioned in Annex.4 dated 15.2.95, they are all from general category and not from SC/ST category. Therefore, petitioner's contention is without any force."

The counsel for the respondent also pointed out a circular issued by the Government of Rajasthan dated 26.5.1995 whereby necessary instructions were given to all the authorities concerned with regard to implementation of reservation of vacancies for Scheduled Castes, Scheduled Tribes and Other Backward Classes while making promotions in accordance with the applicable roster. It is contented that the Circular dt. 26.5.95 is in true spirit of the directions given by the Hon'ble Supreme Court in the case of R.K. Sabharwal (supra) which prohibits excessive reservation than the prescribed limits.

I have heard the counsel for the parties.

I have perused and examined the circular dated 26.5.95. The Circular dt.26.5.95 is certainly in consonance with the directions given by

the Hon'ble Supreme Court in the case of R.K. Sabharwal (supra) but the stand taken by the respondents in their reply is neither in consonance with the directions given by the Hon'ble Supreme Court nor in consonance with the Circular dt.26.5.95. Hon'ble Supreme Court in the case of R.K. Sabharwal emphasized that there is no justification to operate the roster when the posts earmarked in the roster for Scheduled Castes/Scheduled Tribes and the Backward Classes are filled to the extent of percentage of reservation provided for the reserve categories. This clearly relates to filling in the vacancies by way of reservation. It nowhere restricts the right of consideration of members of Scheduled Castes, Scheduled Tribes or the OBCs as the case may be for recruitment/promotion against the vacancies which are not related to reserve categories. Hon'ble Supreme Court in the case of R.K. Sabharwal (supra) in specific terms held that candidates belonging to reserve category can compete for the non-reserve post and in the event of their appointment to the said post their number cannot be treated and taken into consideration for working out the percentage of reservation. The relevant portion of the judgment referred above is worth to be quoted below:

> "When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation."

The petitioner is claiming his right to be considered for promotion to the post of Principal, Postgraduate Degree College on basis of his seniority without claiming any reservation. The respondents have admitted the fact that promotion was denied to the petitioner solely for the reason that number of the persons belonging to Scheduled Castes has

reached to the maximum reservation provided for that category. It is also apparent from the perusal of the documents annexed with the writ petition that the persons junior than the petitioner in the cadre of Vice Principal were promoted against the vacancies which are not related to any reserve category. When the petitioner is claiming his right to be considered for promotion against the vacancies which are not related to any reserve category then there is no reason to deny the same on the count that the petitioner belongs to Scheduled Caste. If the stand taken by respondents is accepted then it will mean as if the statute provides maximum limit of appointment in a specific cadre from amongst the members of belonging to Scheduled Castes, Scheduled Tribes or OBCs as the case may be. This view shall be nothing but against the spirit of the intention for providing reservation for the socially and educationally backward categories.

In view of whatever stated above I am of the considered opinion that it was obligatory for the State of Rajasthan to consider the candidature of the petitioner for promotion against the vacancies of the year 1995-96 against the vacancies which are not related to reserve categories. The denial of consideration for promotion in accordance with the seniority of the petitioner is unjust, arbitrary as well as discriminatory and the same, therefore, is held in violation of Article 14 of the Constitution of India. The reversion of the petitioner was also absolutely unwarranted as the respondents reverted the petitioner without considering his candidature for promotion to the post of Principal, Postgraduate Degree College in accordance with law against the vacancies of the year 1995-96.

No other ground was urged for consideration by the parties.

The writ petition for the reasons mentioned above succeeds and therefore, is allowed. The order impugned dated 23.6.1995 whereby the petitioner was reverted (Annexure-5) is quashed to the extent it relates to petitioner. The respondents are directed to consider the candidature of the petitioner against the vacancies of the year 1995-96 for the purpose of promotion to the post of Principal, Postgraduate College. In the event the petitioner is found suitable, promotion be accorded to him.

No order as to costs.

**(GOVIND MATHUR),J.**

**J.Goyal**